



Signed and Filed: January 29, 2009

A handwritten signature in dark ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re	)	Case No. 08-30575 TEC
	)	
ALLIANCE FINANCIAL	)	Chapter 7
CAPITAL, INC.,	)	
	)	
	)	
Debtor.	)	

**MEMORANDUM RE JACKSON-FENTON MOTION FOR TURNOVER OF FUNDS**

On December 19, 2008, the court held a hearing in the above-captioned case on the Motion for Turnover of Funds filed by the Jackson-Fenton parties. Chris D. Kuhner appeared for movants Jacqueline Jackson, individually and as Trustee of the Jacqueline Trust Dated October 19, 1989 and the Robert S. Jackson Trust Dated December 13, 1986 (Jackson Parties) and Jacqueline and David Fenton (Fenton Parties). Dennis D. Davis appeared for the chapter 7 trustee E. Lynn Schoenmann. James H. Seymour appeared for interested party Jennifer M. Moore. Thomas C. McNally, III appeared for creditors John and Susan Nagle. Kevin C. Driscoll, Jr. appeared for Burke Environmental LLC.

The Jackson-Fenton motion for turnover should be granted on the basis that Jackson and Fenton hold an unavoidable security

1 interest in the funds in question. It is established that Jackson  
2 and Fenton obtained a writ of attachment in San Mateo Superior  
3 Court action 450151. That action was terminated by a judgment  
4 entered in favor of Jackson and Fenton in the same action. As a  
5 result, the judgment lien relates back to the date of the writ of  
6 attachment under Cal. C.C.P. § 697.020.

7 The sole objection to the motion for turnover was filed by  
8 Jennifer Moore. She argues that the judgment lien does not relate  
9 back, because the parties settled the San Mateo action, that the  
10 settlement involved a release of all claims, and that in any event  
11 the settlement replaced the pending claims and could not be the  
12 basis for relation back under section 697.020. This argument is  
13 unpersuasive. First, the judgment was entered in the action in  
14 which the writ had been issued. This is not an instance in which  
15 the action had been dismissed, and plaintiff thereafter sued the  
16 settling defendant for breach of contract in a separate action.  
17 Second, the release never went into effect. Under the terms of the  
18 settlement agreement, the release was effective only upon full  
19 payment of the settlement amount. See Settlement Agreement and  
20 Mutual Release, Part II A. That has never occurred. Until such  
21 performance, which never occurred, the settlement agreement was in  
22 substance a stipulation for entry of judgment.

23 **\*\*END OF MEMORANDUM\*\***

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